



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| <b>Agency name</b>                                 | Department of Education         |
| <b>Virginia Administrative Code (VAC) citation</b> | 8 VAC 20-720-80                 |
| <b>Regulation title</b>                            | Regulations Governing Textbooks |
| <b>Action title</b>                                | Promulgation of new regulation  |
| <b>Date this document prepared</b>                 | May 5, 2008                     |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

During the 2008 General Assembly, three bills were passed that impact the purchasing and provision of textbooks for Virginia's public school students. These bills were HB 137, patroned by Delegate Chris Peace, HB 354, patroned by Delegate Mark Cole and SB 356, patroned by Senator John Watkins. HB 137 and SB 356 are identical and were proposed by the Department of Education. HB 354 is identical, with the addition of a provision making it possible for any private school within a school division to purchase textbooks from the local school board's contract. These bills will all take effect on July 1, 2008.

The Board of Education currently has three regulations governing textbooks. They are the *Regulations Governing Textbook Adoption State Level*, 8 VAC 20-220-10 et seq., *Regulations Governing Textbook Adoption Local Level*, 8 VAC 20-230-10 et seq., and *Regulations Governing Textbook Fund Management and Handling on Local Level*, 8 VAC 20-270-10, et seq. All of these regulations were adopted on or before September 1, 1980, have not been amended since that time and are out of date.

The purpose of this proposal is to repeal the three current regulations and create a new regulation. The three current regulations would be repealed simultaneously with the adoption of the new regulation. The new regulation would capture the requirements of the bills passed by the 2008 General Assembly as well any appropriate requirements in the three current regulations.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 22.1-16 of the *Code of Virginia* provides that “The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.” Additionally, § 22.1-242 of the *Code of Virginia*, effective July 1, 2008, requires the Board of Education to “adopt regulations governing (i) the purchase of textbooks approved by it for use in the public schools directly from the publishers by school boards and (ii) the distribution of such textbooks for the use by children attending public schools in Virginia. (Until July 1, 2008, the requirement that the Board of Education adopt regulations governing textbooks is found in § 22.1-242 of the *Code*.) Additionally, § 22.1-38 of the *Code* permits local school boards to use textbooks not approved by the Board of Education so long as the school board selects the books in accordance with regulations promulgated by the Board.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

These regulations are required by the *Code of Virginia*. Effective July 1, 2008, the provisions of the *Code* will be revised, pursuant to legislation passed by the 2008 General Assembly and signed by the Governor. The regulations need to be revised to comport with the new provisions of the *Code*.

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

As noted above, this proposal is to promulgate a new regulation and to simultaneously repeal the following regulations:

- 8 VAC 20-220-10 et seq.                      Regulations Governing Textbook Adoption State Level
- 8 VAC 20-230-10 et seq.                    Regulations Governing Textbook Adoption Local Level
- 8 VAC 20-270-10 et seq.                    Regulations Governing Textbook Fund Management and Handling on Local Level

The new regulation will capture the requirements of HB 137, HB 354 and HB 356, all passed by the 2008 General Assembly, relating to textbook purchasing. The regulation will include provisions for the approval of textbooks, basal textbooks, contracts with textbook publishers, and the distribution of textbooks and consumable materials.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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There is no viable alternative to this regulatory action. The Board of Education is required to promulgate regulations governing the purchase of textbooks approved by it for use in the public schools directly from publishers by local school boards and the distribution of such textbooks for the use of children attending Virginia's public schools in accordance with § 22.1-242 of the *Code of Virginia*, effective July 1, 2008. Additionally, § 22.1-38 of the *Code* permits local school boards to use textbooks not approved by the Board of Education so long as the school board selects the books in accordance with regulations promulgated by the Board.

## Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

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The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Anne Wescott, Assistant Superintendent for Policy and Communications, Virginia Department of Education, P. O. Box 2120, Richmond, VA 23218-2120, (804) 225-2403, fax (804) 786-5389, e-mail [Anne.Wescott@doe.virginia.gov](mailto:Anne.Wescott@doe.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. A public hearing on the NOIRA will not be held.

## Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed regulatory action is not expected to have a negative impact on the institution of the family and family stability. Provisions requiring local school boards that sell consumable materials to students to develop a policy ensuring that such consumables are furnished to students who are unable to afford them at a reduced price or free of charge will be beneficial to low income families.